

United States District Court District of Massachusetts

LAWRENCE J. MESITE,
Plaintiff,

v.

CIVIL ACTION NO. 04-11942-GAO

NEWTON POLICE OFFICERS DAWN HOUGH,
NEWTON POLICE OFFICER JOANNE BLAY,
NEWTON POLICE OFFICER DINA VACCA,
CITY OF NEWTON,
SUPERINTENDENT KENNETH NELSON,
BRIDGEWATER STATE HOSPITAL,
Defendants.

REPORT AND RECOMMENDATION ON AMENDED MOTION TO DISMISS (#7)

COLLINGS, U.S.M.J.

I RECOMMEND that the Amended Motion to Dismiss (#7) be ALLOWED as to the City of Newton and DENIED as to the three officers.

As to the City, the Complaint is bereft of any allegations which would support liability against the City under the case of *Monell v. Department of Social Services*,

436 U.S. 658 (1978).

As to the three officers, the law is clear that a search without probable cause violates the Fourth Amendment. The facts of the Complaint allege a search without any probable cause whatsoever. There is no basis in the record for a finding of qualified immunity.

The parties are hereby advised that pursuant to Rule 72, Fed. R. Civ. P., any party who objects to this recommendation must file a specific written objection thereto with the Clerk of this Court within 10 days of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the recommendation, or report to which objection is made and the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b), Fed. R. Civ. P., shall preclude further appellate review. *See Keating v. Secretary of Health and Human Services*, 848 F.2d 271 (1 Cir., 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1 Cir., 1986); *Scott v. Schweiker*, 702 F.2d 13, 14 (1 Cir., 1983); *United States v. Vega*, 678 F.2d 376, 378-379 (1 Cir., 1982); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1 Cir., 1980); *see also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Robert B. Collings

ROBERT B. COLLINGS
United States Magistrate Judge

May 16, 2005.